

House File 460 - Introduced

HOUSE FILE 460

BY WINDSCHITL

A BILL FOR

1 An Act relating to drainage or levee districts by providing
2 for mergers, bidding requirements, the annexation of land,
3 and special agreements, and authorizing the imposition of
4 assessments upon affected landowners.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

MERGER

Section 1. NEW SECTION. **468.262 Purpose.**

One or more drainage or levee districts may merge with another levee or drainage district as provided in this part in such a manner that the surviving drainage or levee district continues to exist and absorbs each old drainage or levee district which dissolves.

Sec. 2. NEW SECTION. **468.263 Requirements.**

1. In order for a merger to occur, all of the following must apply:

a. Immediately prior to the merger, all of the following conditions must be satisfied:

(1) One boundary of the proposed old drainage or levee district must completely adjoin all or part of the boundary of the proposed surviving drainage or levee district.

(2) The drainage or levee district includes a number of levees that are operating separately in a manner that does not benefit the territory served by the multiple districts.

b. Each board considering the proposed merger must determine all of the following:

(1) The merger will benefit the owners of the land of the board's district.

(2) It is in the best interests of all landowners in all proposed old drainage or levee districts and the proposed surviving district to establish a system of levees managed as part of a system.

2. A merger may occur notwithstanding that a drainage or levee district is not otherwise eligible for dissolution as provided in part 6.

Sec. 3. NEW SECTION. **468.264 Hearing.**

The boards of one or more proposed old drainage or levee districts and the board of a proposed surviving drainage or levee district may, upon respective motions, enter an order to conduct one or more hearings regarding a proposed merger. If

1 the board of at least one proposed old district or the board of
2 the proposed surviving district orders a hearing, all of the
3 following applies:

4 1. A hearing shall be conducted within forty days after
5 the date the order to conduct the hearing is entered by that
6 district's board.

7 2. The proposed surviving drainage or levee district shall
8 immediately provide notice of each hearing. The notice may be
9 provided by any of the following:

10 a. Personal delivery to the same persons and in the same
11 manner as provided in section 468.257, subsection 2.

12 b. Publication once each week for two consecutive weeks in
13 a newspaper published in each county where the proposed old and
14 surviving drainage or levee districts are located. The notice
15 must at a minimum describe the purpose of the hearing and the
16 time and date of the hearing.

17 3. a. The boards of one or more proposed old drainage or
18 levee districts and the board of a proposed surviving drainage
19 or levee district may conduct the hearings jointly.

20 b. Nothing in this section prevents a proposed old or a
21 proposed surviving drainage and levee district board from
22 convening and conducting a hearing in a manner consistent with
23 section 468.258.

24 4. The boards of the proposed old district and the proposed
25 surviving district may vote on the question to merge. However,
26 the vote must be within forty-five days of the last hearing.

27 5. Upon the affirmative vote by the board of at least one
28 proposed old district and the board of the proposed surviving
29 district, the boards shall meet jointly to vote for the
30 adoption of a merger resolution. The resolution shall be
31 deemed disapproved unless the boards, meeting jointly, vote to
32 approve the resolution within forty-five days after the last
33 district voted to approve the merger. Any costs associated
34 with conducting a joint meeting shall be borne by the district
35 proposed to be the surviving district, regardless of the

1 outcome of the vote.

2 Sec. 4. NEW SECTION. **468.265 Joint order for merger.**

3 A merger approved by the board of at least one old drainage
4 or levee district and the board of a surviving drainage or
5 levee district as provided in this section shall be effectuated
6 according to the terms and conditions of a joint order for
7 merger entered by those boards.

8 1. The joint order shall be filed with the county auditor of
9 the county in which the surviving drainage or levee district
10 is located and noted on the drainage record in the same manner
11 as provided in section 468.258.

12 2. Upon the filing of the joint order with the county
13 auditor as provided in subsection 1, all of the following
14 applies:

15 *a.* The title to all real estate, other property,
16 improvement, and any right-of-way held by an old drainage or
17 levee district is vested in the surviving drainage or levee
18 district, subject to any condition which applied immediately
19 prior to the merger.

20 *b.* The surviving drainage or levee district assumes all
21 existing obligations of an old drainage or levee district.

22 *c.* A proceeding pending against an old drainage or levee
23 district may be continued as if the merger did not occur or the
24 surviving drainage or levee district may be substituted in the
25 proceeding for the old drainage or levee district.

26 *d.* The merger does not affect a classification of land or
27 the levy of assessments.

28 *e.* The original cost and the subsequent cost of improvements
29 in the old drainage or levee district shall be added to and
30 become a part of the original cost and the subsequent cost of
31 improvements in the surviving district.

32 3. The surviving drainage or levee district shall pay any
33 remaining costs associated with the merger.

34 Sec. 5. DIRECTIONS TO CODE EDITOR. The Code editor shall
35 codify the provisions of this Act as chapter 468, subchapter

1 I, part 7.

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DIVISION II

3

BIDDING PROCEDURES

4 Sec. 6. Section 468.34, Code 2013, is amended by striking
5 the section and inserting in lieu thereof the following:

6 **468.34 Bidding procedures — Iowa Construction Bidding**
7 **Procedures Act.**

8 When ordering the construction of an improvement under
9 this part, the board and any bidders shall comply with the
10 competitive bid requirements applicable to a governmental
11 entity ordering the construction of a public improvement in
12 chapter 26.

13 Sec. 7. Section 468.66, Code 2013, is amended to read as
14 follows:

15 **468.66 Bids required.**

16 In case the board ~~shall finally determine~~ determines that
17 ~~any such changes as defined a change described~~ in section
18 468.62 ~~shall be made involving an expenditure of twenty~~
19 ~~thousand dollars or more~~ increases the cost of the improvement
20 to more than the competitive bid threshold as provided in
21 section 26.3, the work shall be let by bids in the same
22 ~~manner as is provided for the original construction of such~~
23 ~~improvements~~ board and any bidders shall comply with the
24 competitive bid requirements applicable to a governing entity
25 ordering the construction of a public improvement in chapter
26 26.

27 Sec. 8. Section 468.126, subsection 1, paragraph c, Code
28 2013, is amended by striking the paragraph and inserting in
29 lieu thereof the following:

30 c. When ordering a repair under this section, the board and
31 any bidders shall comply with the competitive bid requirements
32 applicable to a governing entity ordering the construction of a
33 public improvement in chapter 26.

34 Sec. 9. Section 468.126, subsection 2, Code 2013, is amended
35 to read as follows:

1 2. In the case of minor repairs not in excess of the
 2 competitive bid threshold as provided in section 26.3, or in
 3 the eradication of brush and weeds along the open ditches, not
 4 in excess of twenty thousand dollars, where the board finds
 5 that a saving to the district will result, the board may cause
 6 the repairs or eradication to be done by secondary road fund
 7 equipment, or weed fund equipment, and labor of the county and
 8 then reimburse the secondary road fund or the weed fund from
 9 the fund of the drainage district thus benefited.

10 Sec. 10. Section 468.126, subsection 4, Code 2013, is
 11 amended to read as follows:

12 4. For the purpose of this subsection, an "*improvement*" in
 13 a drainage or levee district in which any ditch, tile drain or
 14 other facility has previously been constructed is a project
 15 intended to expand, enlarge, or otherwise increase the capacity
 16 of any existing ditch, drain, or other facility above that for
 17 which it was designed.

18 a. When the board determines that ~~improvements are an~~
 19 improvement is necessary or desirable, the board shall appoint
 20 an engineer to make surveys as seem appropriate to determine
 21 the nature and extent of the needed ~~improvements~~ improvement,
 22 and to file a report showing what ~~improvements are~~ improvement
 23 is recommended and ~~their~~ its estimated ~~costs~~ cost, which report
 24 may be amended before final action. ~~If the estimated cost of~~
 25 ~~the improvements does not exceed twenty thousand dollars, or~~
 26 ~~twenty-five percent of the original cost of the district and~~
 27 ~~subsequent improvements, whichever is the greater amount, the~~
 28 ~~board may order the work done without notice.~~ The board shall
 29 not divide proposed improvements into separate programs in
 30 order to avoid the limitation for making improvements without
 31 notice compliance with paragraph "b". ~~If the board deems~~
 32 ~~it desirable to make improvements where the estimated cost~~
 33 ~~exceeds the twenty thousand dollar or twenty-five percent~~
 34 ~~limit, the board shall set a date for a hearing on the matter~~
 35 ~~of constructing the proposed improvements and also on the~~

~~1 matter of whether there shall be a reclassification of benefits~~
~~2 for the cost of the proposed improvements and shall give~~
~~3 notice as provided in sections 468.14 through 468.18. At the~~
~~4 hearing, the board shall hear objections to the feasibility~~
~~5 of the proposed improvements and arguments for or against~~
~~6 a reclassification presented by or for any taxpayer of the~~
~~7 district. Following the a hearing, if required by section~~
~~8 26.12, the board shall order that the improvements it deems~~
~~9 desirable and feasible be made and shall also determine whether~~
~~10 there should be a reclassification of benefits for the cost of~~
~~11 improvements. If it is determined that a reclassification of~~
~~12 benefits should be made, the board shall proceed as provided in~~
~~13 section 468.38. In lieu of publishing the notice of a hearing~~
~~14 as provided by this subsection section 362.3, the board may~~
~~15 mail a copy of the notice to each address where a landowner in~~
~~16 the district resides by first class mail if the cost of mailing~~
~~17 is less than publication of the notice. The mailing shall be~~
~~18 made during the time the notice would otherwise be required to~~
~~19 be published.~~

20 b. When ordering the construction of an improvement under
 21 this subsection, the board shall comply with the competitive
 22 bid requirements applicable to a governing entity ordering the
 23 construction of a public improvement in chapter 26.

24 c. If the estimated cost of the improvements as defined
 25 in this subsection exceeds twenty-five thousand dollars the
 26 competitive bid threshold as provided in section 26.3, or the
 27 original cost of the district plus the cost of subsequent
 28 improvements in the district, whichever is the greater amount,
 29 a majority of the landowners, owning in the aggregate more than
 30 seventy percent of the total land in the district, may file a
 31 written remonstrance against the proposed improvements, at or
 32 before the time fixed for hearing on the proposed improvements,
 33 with the county auditor, or auditors in case the district
 34 extends into more than one county. If a remonstrance is filed,
 35 the board shall discontinue and dismiss all further proceedings

1 on the proposed improvements and charge the costs incurred
2 to date for the proposed improvements to the district. Any
3 interested party may appeal from such orders in the manner
4 provided in this subchapter, parts 1 through 5. However, this
5 section does not affect the procedures of section 468.132
6 covering the common outlet.

7 Sec. 11. REPEAL. Sections 468.35 and 468.36, Code 2013,
8 are repealed.

9

DIVISION III

10

ANNEXED LAND

11 Sec. 12. Section 468.121, Code 2013, is amended to read as
12 follows:

13 **468.121 Levy Assessment levied on annexed lands.**

14 After ~~annexation is made~~ territory has been annexed by a
15 drainage or levee district, the board may levy upon the annexed
16 lands an assessment sufficient to equal the assessments for
17 benefit originally paid by the lands of equal classification
18 if the finding by the board as provided by section 468.119
19 was that the lands should have been included in the district
20 when originally established, plus their proportionate share of
21 the costs of any enlargement or extension of drains required
22 to serve the annexed lands. If the finding of the board
23 as provided in section 468.119 was based on the fact that
24 additional lands are now benefited by virtue of the repair,
25 improvement, or the change of the topographical conditions
26 made to the district and were not benefited by the district
27 as originally established, then the board shall levy upon
28 the annexed lands an assessment sufficient to pay ~~their~~ the
29 proportionate share of the costs of the repair or improvement
30 which was the basis for the lands being annexed. If the
31 board finds that the lands are presently receiving benefits
32 from the district but that some were reasonably omitted
33 from the original establishment because of the change of the
34 topographical conditions, the assessments levied upon the
35 annexed lands shall be limited to a proportionate share of

1 the costs of current and future maintenance, repairs, and
2 improvements.

3 Sec. 13. NEW SECTION. **468.121A Ordinary and special**
4 **assessment on annexed lands.**

5 1. After annexed lands have been classified and the benefits
6 determined as provided in section 468.120, such classification
7 shall be the basis for all future assessments in the district
8 as which shall be imposed as provided in this subchapter.

9 2. In addition to the assessment described in subsection 1,
10 the board may impose a special assessment on the annexed lands
11 for the cost of improvements made within the district for not
12 longer than five years prior to the date of annexation.

13 a. In order to impose the special assessment the board
14 must approve a report by an engineer appointed by the board as
15 provided in this subchapter stating those improvements directly
16 benefiting the annexed land made within the five-year period.

17 b. The amount of the special assessment shall not exceed the
18 amount that would have been assessed if the annexed land were
19 part of the drainage or levee district during the five previous
20 years.

21 c. This board shall not impose the special assessment if
22 the annexed land is subject to an assessment levied pursuant
23 to section 468.121.

24 DIVISION IV

25 AGREEMENTS

26 Sec. 14. Section 468.187, Code 2013, is amended to read as
27 follows:

28 **468.187 Agreements with ~~outside~~ owners or other districts.**

29 1. Levee and drainage districts are empowered to enter into
30 agreements with the owners of lands lying inside or outside of
31 said districts, or with other levee and drainage districts or
32 municipalities, to provide levee protection or drainage for
33 such lands on such terms as the board may agree and subject to
34 the following terms and conditions:

35 ~~1-~~ a. The facilities of the district furnishing the service

1 shall not be overburdened.

2 ~~2.~~ b. There shall be no additional cost to the district
3 furnishing the service.

4 ~~3.~~ c. The agreement shall be in writing, be made a part of
5 the drainage records and shall include all of the following:

6 ~~a.~~ (1) The description of the lands to be served~~+~~.

7 ~~b.~~ (2) The location of tile lines constructed or to be
8 constructed~~+~~.

9 ~~c.~~ (3) The consideration to be paid to the district
10 furnishing the service and the classification of the lands to
11 be served~~+~~ and.

12 ~~d.~~ (4) Such other provisions as the board deems necessary.

13 2. The provisions in an agreement described in subsection
14 1 modify other provisions of this chapter applicable to such
15 lands.

EXPLANATION

17 BACKGROUND. When a drainage or levee district is first
18 established, it is managed by a board of supervisors in the
19 county where the district is located or by a joint board of
20 supervisors if the district extends into more than one county
21 (Code chapter 468, subchapter I). After the district has
22 been established, the board of supervisors, or joint board of
23 supervisors, may transfer its jurisdiction to another governing
24 body, including a three-member board of elected trustees.

25 MERGER. This bill provides that one or more drainage or
26 levee districts may merge with another levee or drainage
27 district in such a manner that the surviving drainage or levee
28 district continues to exist and absorbs each old drainage
29 or levee district which dissolves. In order for a merger
30 to occur, the districts must have adjacent borders, the
31 districts must include one or more levees, and the respective
32 boards of the districts must determine that the merger will
33 benefit their district's landowners. The boards of each
34 proposed old district and the proposed surviving district
35 must conduct hearings separately or jointly. If the merger

1 is approved by at least one proposed old district and the
2 board of the proposed surviving district, the boards must
3 meet jointly to vote for the adoption of a merger resolution.
4 The effect of the resolution is to transfer and vest to the
5 surviving district title to real estate or other property
6 and rights-of-way held by an old district. The surviving
7 district assumes all existing obligations of an old district.
8 The merger does not affect a classification of land or the
9 levy of assessments. The bill directs the Code editor to
10 organize these provisions as a new part 7 of Code chapter 468,
11 subchapter I.

12 BIDDING PROCEDURES. A number of provisions require
13 the board to advertise for bids when awarding contracts to
14 construct an improvement or make a repair. The provisions
15 usually require the board to publish a notice in a newspaper,
16 hold a hearing, opening bid responses, posting bonds, and
17 awarding contracts (Code sections 468.34 through 468.37).
18 These provisions apply if the amount of the work exceeds a
19 certain threshold (\$20,000). However, the "Iowa Construction
20 Bidding Procedures Act" (Code chapter 26) provides similar
21 requirements for a "governmental entity" defined in part to
22 mean the state, political subdivisions of the state, and all
23 boards or commissions empowered to enter into contracts for
24 the construction of public improvements. The threshold that
25 triggers those requirements is an amount in excess of \$100,000.
26 The bill requires the board to follow the competitive bid
27 requirements of Code chapter 26.

28 ANNEXED LAND — ASSESSMENTS. The bill amends provisions
29 which allow a drainage or levee district to annex territory for
30 purposes of ensuring that persons benefiting from a district
31 also pay for its maintenance (Code section 468.119). The bill
32 provides that after the annexed lands have been classified and
33 the benefits determined by the board, the classifications shall
34 be used as the basis for future assessments. In addition, the
35 board may impose a special assessment on the annexed lands

1 for the cost of improvements made within the district for not
2 longer than five years prior to the date of annexation. The
3 amount of the special assessment cannot exceed the amount that
4 would have been assessed if the annexed lands were part of the
5 drainage or levee district during that period. A board which
6 uses this option cannot also assess the land based on current
7 law which provides that the board may impose a levy on assessed
8 land for a cost originally assumed by the district but where
9 not assessed upon the annexed land because such land was not
10 included due to oversight (Code section 468.121).

11 USE OF AGREEMENTS. The bill amends a provision that
12 authorizes the board to enter into agreements with an owner
13 of land located outside the district, or another district or
14 city, in a manner that benefits that outside party (e.g.,
15 extending levee protection) subject to a number of conditions
16 (the facilities of the district cannot be overburdened,
17 there cannot be any additional cost to the district, and the
18 agreement must be part of the district's records). The bill
19 provides that the district may enter into an agreement with an
20 owner of land located within the district. It also provides
21 that the agreement's provisions may modify any other applicable
22 provision in drainage law.